

D-8

STATE OF HAWAII  
DEPARTMENT OF LAND AND NATURAL RESOURCES  
Land Division  
Honolulu, Hawaii 96813

November 22, 2010

Board of Land and Natural Resources  
State of Hawaii  
Honolulu, Hawaii

PSF No.: 08MD-183  
Maui

Authorize the Chairperson of the Department of Land and Natural Resources to Negotiate the Terms and Conditions, and Sign a Memorandum of Agreement between the Department, the Hawaii Housing Finance and Development Corporation ("HHFDC") and Pioneer Mill Company, LLC ("PMCo") regarding the Drainage and Disposal of Transformer Fluid and Cleaning Up Impacted Soils, located in Lahaina, Maui County, at TMK No. (2) 4-5-021:022 (portion of).

Applicant:

The Department of Land and Natural Resources ("Department"), Land Division, and the Hawaii Housing Finance and Development Corporation ("HHFDC")

Legal Reference: Sections 171-6, Hawaii Revised Statutes, as amended

Location:

The subject property is located in Lahaina, Maui County, identified by TMK No. (2) 4-5-021:022 (portion of).

Background:

On February 25, 1994, under agenda item F-6, the Board of Land and Natural Resources ("Board") approved the conveyance of approximately 1,125 acres to the HHFDC (formerly, the Housing Finance and Development Corporation, or "HFDC") for the Lahaina Master Planned Project ("Project") to provide affordable housing in the Lahaina area. The Board also approved granting HHFDC an immediate right-of-entry to use the site for a long-term development of a master planned community, until the conveyance, in whole or in parts, of the state lands was completed. According to the submittal, the conveyance of the lower half of the development project (550 acres, more or less) was nearly complete. On November 4, 1994, by Land Patent No. S-15,792, these lands were conveyed to HHFDC. However, the remainder of the conveyance of lands for the Project, approximately 575 acres and included the subject parcel, identified by TMK No. (2) 4-5-021:022 (formerly, parcel 9) was halted by the ceded lands litigation filed by the Office of Hawaiian Affairs in November 1994. Subsequent legal disputes focusing on the issue of the sale of ceded lands by the HHFDC put the Project in abeyance until recently.

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In late 2007, the HHFDC retained a consultant to undertake a review and update of the Project, now called The Villages of Leiali'i.

On August 14, 2009, under agenda item H-3, the Board approved the issuance of a management right-of-entry to the HHFDC, identified by TMK No. (2) 4-5-021:004 (portion of) and 022 (portion of), for the purposes of developing the Villages of Leiali'i - Mauka Lands. (see Exhibit A). This action was part of the set aside to the Department's Division of Forestry and Wildlife for Na Ala Hele Trail and Off Highway Vehicle Park purposes. Since a small portion of parcel 4 fell within the HHFDC's master plan for the housing development as well as several wells needed for the project, the Department issued a management right-of-entry to the HHFDC on August 28, 2009, which was executed on September 3, 2009. For this reason, HHFDC is included as a party to this Memorandum of Agreement between the Department and PMCo.

The Department and HHFDC are requesting that PMCo enter the subject property for the purposes of draining and disposing of transformer fluid contained in one (1) pole-mounted transformer, three (3) substation transformers and two (2) substation capacitors that were reported to be in poor condition and may pose a material threat of a release or past release of a hazardous substance as described in the Phase I Environmental Site Assessment for Villages of Leiali'i Phases A and B (September 2008).

The scope of work shall include the remediation, removal and disposal of any contamination that is determined to exist in the area that is or may be a result of any prior use of hazardous materials associated with the transformers.

Attached is a "draft" copy of the Memorandum of Agreement (see Exhibit B), which delineates the responsibilities of the three (3) Parties.

Recommendation that the Board:

Authorize the Chairperson to negotiate terms and conditions and sign on behalf of the Department and the Board a Memorandum of Agreement between the Board, HHFDC and PMCo, subject to review and approval as to form by the Department of the Attorney General.

Respectfully Submitted,



Lydia M. Morikawa  
Special Projects and Development Specialist

APPROVED FOR SUBMITTAL:



Laura H. Thiel, Chairperson

Attachments

### 3. DIVISION OF FORESTRY AND WILDLIFE

- i. Approve update fees for camping, cabin, and other recreational uses in forest reserves.
- j. Conduct public hearings to repeal hawaii administrative rules chapter 13, § 13-125, "rules regulating wildlife sanctuaries", and adopt chapter 13, § 13-126, "rules regulating wildlife sanctuaries".
- k. Set aside to department of land and natural resources, division of forestry and wildlife for wildlife sanctuary purposes and issuance of a management right-of-entry, eighteen wildlife sanctuaries previously designated by the board and identified in chapter 13-125, hawaii administrative rules.
- l. Set aside to department of land and natural resources, division of forestry and wildlife for wildlife sanctuary purposes and issuance of a management right-of-entry, pala'au, moloka'i, tax map keys: (2)5-1-1:2, 4 and (2) 5-2-11:4.
- m. Authorize the chairperson of the department of land and natural resources to develop and operate public shooting ranges via cooperative agreement, concession, or lease .
- n. Conduct public hearings to amend chapter 13, § 13-121, "rules regulating the hunting of wildlife on public lands and other lands" to establish rules regulating the use of public shooting ranges.
- o. Set aside to department of land and natural resources, division of forestry and wildlife for na ala hele trail and off highway vehicle park purposes and issuance of a management right-of-entry, wahikuli, maui, tax map key: (2) 4-5-21:4.

### INFORMATION

The Division of Forestry and Wildlife, as part of the Recreational Renaissance, is requesting seven distinctly different but related actions by the Board to allow for improved service to the public and increase revenue generation for improved management capacity for the Division of Forestry and Wildlife.

- i. Update fees for camping, cabin, and other recreational uses in forest reserves

### BACKGROUND:

Pursuant to HRS Chapter 183 and HAR Chapter 104, the Board of Land and Natural Resources is authorized to set and charge fees for issuance of Forest Reserve system permits to the public. Pursuant to HRS Chapter 198D and HAR Chapter 13-130-42, the Board is authorized to set charge fees for the use of Na Ala Hele Trails system. The

Division of Forestry and Wildlife currently issues Camping Permits for use of cabins and campground facilities that it manages. Recently, the Department's Division of State Parks conducted an analysis of, and provided the Board with recommendations for, increases in fees for cabin and campground use in State Parks. In order to bring permit fees that DOFAW charges for similar uses up to date, and to provide consistency across the Department, the Division recommends that the Board approve an increase in Forest Reserve and Na Ala Hele Trail system camping permit fees that emulates the fees proposed by State Parks as detailed in Attachment C. 1. 1. The fees collected will be deposited into the Forest Stewardship and Na Ala Hele special funds, respectively, and used for future maintenance and operation of the recreational facilities.

Pursuant to HRS Chapter 183 and HAR Chapter 104, the Board of Land and Natural Resources is authorized to set and charge fees for issuance of Forest Reserve System permits to the public. DOFAW currently issues Forest Reserve System Commercial Harvest Permits for commercial harvest of both timber and non-timber forest products. However, other recreational commercial activities are occurring within the Forest Reserve System that do not have existing fee guidelines set by the Board, nor fall under the commercial activity permit system provided under the Na Ala Hele Program's (NAH) HAR 13-130. The NAH Program does charge fees for commercial tour activities based in part on the number of people involved and the relative impact of use. In order to establish permit fees that DOFAW charges for other commercial activities in the Forest Reserve System and to provide consistency across the Department, the Division recommends that the Board approve an increase in Forest Reserve System Recreational Commercial Permit fees that emulates the fees currently employed by the NAH Program as detailed in Attachment C. 1. 2. The fees collected will be deposited into the Forest Stewardship special fund and used for future maintenance and operation of the recreational facilities.

**i. RECOMMENDATION:**

Pursuant to the authority granted to the Board by HRS Chapter 183 and HAR Chapter 104, and HRS Chapter 198D and HAR Chapter 13-130-42, approve updated fees for Forest Reserve and Na Ala Hele system camping permits, with fees to be deposited into the respective program special funds.

Pursuant to the authority granted to the Board by HRS Chapter 183 and HAR Chapter 104, approve updated fees for Forest Reserve system commercial permits as discussed above and detailed in Attachment C. 1. 2., with the fees collected to be deposited into the Forest Stewardship special fund and used for future maintenance and operation of the recreational facilities.

- j. Conduct Public Hearings to repeal Hawaii Administrative Rules Chapter 13, § 13-125, "Rules Regulating Wildlife Sanctuaries", and adopt Chapter 13, §13-126, "Rules Regulation Wildlife Sanctuaries"**

## **BACKGROUND:**

The Hawaii State Wildlife Sanctuary system supports many of the state's most important and sensitive habitats for native flora and fauna, and includes offshore islets, coastal wetlands, and montane forests. Many wildlife sanctuaries provide opportunities for education and recreation in the form of wildlife viewing and nature activities, and some are heavily used. With increasing pressure from human use, wildlife sanctuaries across the state are in need of enhanced measures to protect their native resources.

Statutory recognition of the importance of many of these habitats dates at least to the turn of the last century when President Theodore Roosevelt signed Executive Order #1019 in 1909 establishing Kure Atoll as a seabird preserve. In the years that followed prior to statehood, a series of state laws and executive orders were enacted for the protection of several offshore islets that supported significant seabird breeding areas. The protections were codified as regulations under the then Division of Fish and Game, and in 1981, replaced with Title 13, Chapter 125, Rules Regulating Wildlife Sanctuaries (HAR 13-125), which established the wildlife sanctuary system under the Division of Forestry and Wildlife consisting of 42 offshore islets, two coastal wetland sites, and one montane forest site. While those rules afford significant protection for some sanctuaries, they have never been revised or updated and are now in need of revision. Because the proposed revision is extensive, the Division proposes to repeal HAR 13-125 and adopt a new rule, HAR 13-126, detailed in Attachment C. 2. 1.

The regulatory approach in HAR 13-125 is to provide general rules regulating human activities in most sanctuaries, and prohibit all entry to five select sanctuaries, all of which are offshore islets. The revisions proposed here address a number of issues with the current rules, which are now nearly 30 years old. These are:

- Wildlife sanctuaries are characterized by some of the most sensitive habitats where human access can have devastating effects. However, some sanctuaries can support certain levels of public access and recreational use in some areas without risk to the natural resources. The current rules do not recognize this, designating five particular sanctuaries as closed in all areas, and all others as open in all areas. The Division proposes a new approach to the rules that will allow for restricted access to some sanctuaries when conditions can be specified that will allow access without risk to the native resources. Examples include some offshore islets in which activities on the beach or below the waterline will not impact native resources, seasonal restrictions to protect nesting birds during the breeding season, and restrictions on the number of visitors at any given time. Attachment C. 2. B. lists the 48 wildlife sanctuaries and identifies those for which closure or restrictions are proposed. Attachment C. 2. C. shows the locations of the sanctuaries corresponding to Attachment C. 2. B. The specific access provisions and restrictions identified in the rule for select sanctuaries are under development. The Division is consulting with communities to incorporate additional information pertinent to public access to be included in the final draft rule, which will be released for public review and comment, subject to chapter 91, Hawaii Revised Statutes (HRS).

•The revision will add new sanctuaries to the system. Five new wildlife sanctuaries have been added to the system by executive order since 1981. Under chapter 183D-3, subject to chapter 91, Hawaii Revised Statutes, the department shall adopt, amend, and repeal rules for the protection of wildlife sanctuaries. The additions are Pauwahu Point, Maui (EO# 3307, 1985), Hamakua Marsh, Oahu (EO# 3712, 1997), Puu Waawaa Forest Bird Sanctuary, Hawaii (EO# 3937, 2002), Pouhala Marsh, Oahu (EO# 4146, 2006), and Kawainui Marsh, Oahu (EO# 4201, 2007). In addition, the Division intends to propose the addition of Kapapa Island, Oahu and thirteen additional offshore islets that have significant biological resources to the inventory.

•The revision adds new protections for natural resources by recognizing that the purpose of the rules is to protect wildlife *and their habitats*. The revision provides explicit protection for all flora, fauna, geological, and cultural resources.

•The revision incorporates a number of new rules modeled after other department rules, including provision for native Hawaiian practice, access permits, regulation and fees for commercial activities, and additional measures to protect resources and public safety by allowing for the establishment of visiting hours and for temporary closure of up to two years, subject to approval by the board. Also added are regulations for a number of common activities that have potentially negative effects in wildlife sanctuaries, such as boating and vehicle use, litter, explosives, and use of motors and modelcraft.

•The revision identifies fees for commercial recreational activities consistent with those of the Forest Reserves and Na Ala Hele trails, with revenues to be deposited into the Endangered Species Trust Fund pursuant to HRS 195D-31.

**j. RECOMMENDATION:**

1. Approve that the Division of Forestry and Wildlife proceed with revisions to the wildlife sanctuary rules and consult with affected communities on access issues in the development of the draft rule.
2. Approve that the Division of Forestry and Wildlife conduct public hearings to repeal chapter 13-125 and adopt chapter 13-126, Hawaii Administrative Rules, subject to review and approval by the Chairperson and the Office of the Attorney General.
3. Authorize the Chairperson to set dates and times for public hearings, and appoint corresponding hearings officers.
4. Authorize any fees collected pursuant to the permitting of commercial activities in wildlife sanctuaries be deposited in the Endangered Species Trust Fund, pursuant to chapter 195D-31.

- k. Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Wildlife Sanctuary Purposes and Issuance of a Management Right-of-Entry, Eighteen Wildlife Sanctuaries Previously Designated by the Board and Identified in Chapter 13-125, Hawaii Administrative Rules.

APPLICANT: Department of Land and Natural Resources, Division of Forestry and Wildlife

LEGAL REFERENCE: Section 171-11 and 55, Hawai'i Revised Statutes (HRS), as amended.

LOCATION: Portions of Government lands comprising eighteen offshore islets of the islands of Hawaii, Maui, Molokai, Lanai, and Kauai.

Island Name	County	County	County	Area (Acres)	Reference
Keaoi	Hawaii	Hawaii	Kau	4	(3) 9-8-001:007
Mokupuku	Hawaii	Hawaii	North Kohala	1.5	(3) 5-1-001:015
Paokalani Island	Hawaii	Hawaii	North Kohala	2.4	(3) 5-1-001:013
Mokuaeae	Kauai	Kauai	Hanalei	3	(4) 5-2-004:018
Moku Naio	Maui	Lanai	Lahaina	0.08	N/A
Nanahoa Islets	Maui	Lanai	Lahaina	1.6	(2) 4-9-003:004
Poopoo	Maui	Lanai	Lahaina	0.5	N/A
Puupehe	Maui	Lanai	Lahaina	1.1	(2) 4-9-003:003
Alau Island	Maui	Maui	Hana	4.5	(2) 1-4-002:001
Keopuka Rock	Maui	Maui	Hana	1.7	(2) 1-1-001:049
Mokeehia Island	Maui	Maui	Wailuku	4.5	(2) 3-1-001:011
Moku Hala	Maui	Maui	Hana	0.18	N/A
Moku Mana	Maui	Maui	Hana	0.7	N/A
Papanui O Kane	Maui	Maui	Makawao	3.13	(2) 2-8-003:026
Huelo	Maui	Molokai	Kalawao	3.1	(2) 6-1-001
Mokapu Island	Maui	Molokai	Molokai	2.6	(2) 6-1-001
Mokumanu	Maui	Molokai	Molokai	2.87	N/A
Okala Island	Maui	Molokai	Kalawao	2.15	(2) 6-1-001

AREA: 39.6 acres, more or less.

ZONING: State Land Use District: Conservation; County CZO: None

**TRUST LAND STATUS:**

1. Section 5(b) lands of the Hawai'i Admission Act
2. DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution: YES \_\_\_\_\_  
NO X

**CURRENT USE STATUS:** Vacant and unencumbered.

**PURPOSE:** Wildlife Sanctuary purposes.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

**APPLICANT REQUIREMENTS:** Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

**REMARKS:**

Title 13, Chapter 125, Rules Regulating Wildlife Sanctuaries (HAR 13-125) which established the wildlife sanctuary system under the Division of Forestry and Wildlife in 1981 identifies 42 offshore islets, two coastal wetland sites, and one montane forest as wildlife sanctuaries. However, eighteen of the 42 sanctuaries designated by rule in 1981 were never set aside to the Division of Forestry and Wildlife by executive order, and remain, therefore, technically unencumbered. This request allows the Division to proceed with the actions needed for the executive orders to set aside the sanctuaries to the Division of Forestry and Wildlife.

**k. RECOMMENDATION:**

That the Board, subject to Applicant fulfilling the Applicant Requirements above in sub-item k:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:



- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry to Division of Forestry and Wildlife covering the subject area, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- I. Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Wildlife Sanctuary Purposes and Issuance of a Management Right-of-Entry, Pala'au, Moloka'i, Tax Map Keys: (2) 5-1-1:2, 4 and (2) 5-2-11:4.**

**APPLICANT:** Department of Land and Natural Resources, Division of Forestry and Wildlife

**LEGAL REFERENCE:** Section 171-11 and 55, Hawai'i Revised Statutes (HRS), as amended.

**LOCATION:** Portion of Government lands of Ho'olehua situated at Pālā'au, Moloka'i, Moloka'i, identified by Tax Map Keys: (2)5-1-1:2, 4, 5, and the unencumbered parcels seaward of (2)5-1-1:2, 4, and (2) 5-2-11:4, as shown on the attached map labeled Attachment C.4.1.

**AREA:** 314.5 acres, more or less.

**ZONING:** State Land Use District: Agriculture; County of Maui CZO: None

**TRUST LAND STATUS:**

- 1. Section 5(b) lands of the Hawai'i Admission Act
- 2. DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution:  
YES \_\_\_\_ NO X

**CURRENT USE STATUS:** Vacant and unencumbered.

**PURPOSE:** Wildlife Sanctuary purposes.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

**APPLICANT REQUIREMENTS:** Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

**REMARKS:**

The Hoolehua wetlands located at Palaau, Molokai currently comprises a degraded coastal wetland on unencumbered state land on the southern shore of Molokai. The site formerly provided habitat for native species, including native plants, migratory birds, and four endangered waterbird species. The wetlands have been degraded through extensive sediment accumulation from past upslope agricultural practices and by encroachment of aggressive non-native weedy vegetation. The level of sediment build-up at the site has compromised ecosystem function and allows run-off to damage marine habitats and coral reefs in the area. The goal of this requested action is to establish a wildlife sanctuary and begin responsible management to reclaim and restore functioning of degraded Molokai coastal wetlands. Management is expected to benefit the community, provide habitat for native wildlife, protect coastal areas and coral reefs, enhance cultural opportunities, and provide appropriate public access and educational advancement.

During public hearings conducted on Molokai in March, 2009, in which the Department accepted comments on a proposal to establish a wildlife sanctuary at this site, the Department received comments indicating that portions of these lands were formerly used for cultural practice as fishponds. The department intends to continue to work with the community to establish compatible use of the lands so that the community may restore and use the former fish ponds while enhancing the ecosystem integrity, wetland function, and wildlife habitat of those lands.

**I. RECOMMENDATION:**

That the Board, subject to Applicant fulfilling the Applicant Requirements above in sub-item I:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:

- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - C. Review and approval by the Department of the Attorney General; and
  - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry to Division of Forestry and Wildlife covering the subject area, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
- m. Authorize the Chairperson of the Department of Land and Natural Resources to Develop and Operate Public Shooting Ranges via Cooperative Agreement, Concession, or Lease.**

**BACKGROUND:**

In February of 2007, the Board approved in concept the creation of a public shooting range in the makai area of the Puu Anahulu Game Management Area of Hawaii Island, North Kona District, and authorized continued work to plan and develop the facility. Similar developments are now in progress to establish a public shooting range at Hanahanapuni Crater, within an area previously set aside by the board on February 23, 2001 for use as a public shooting range in the Lihue-Koloa Forest Reserve of Wailua, Kauai, Hawaii.

In order to ensure adequate and safe management of the facilities, the department is requesting authorization to establish a management agreement with a private or partner entity, and to promulgate administrative rules to regulate the safe use of the facilities. Chapter 183D-28(e), Hawaii Revised Statutes, authorizes the department to "construct, operate, and maintain public outdoor and indoor target ranges for the program". Chapter 171-56 authorizes the department to enter into contracts or issue licenses for concessions, subject to Chapter 102, such as would be negotiated and established for the operation and management of the Puuanahulu and Hanahanapuni public shooting ranges pursuant to this request.

**m. RECOMMENDATION:**

1. Authorize the Chairperson to proceed with development of public shooting ranges as described above and to negotiate and enter into cooperative agreements, concessions, or leases pursuant to Chapters 171-56 and/or Chapter 102, Hawaii Revised Statutes, for the operation and management of public shooting ranges, subject to review and approval by the Office of the Attorney General.

**n. Conduct Public Hearings to Amend Chapter 13, § 13-121, "Rules Regulating the Hunting of Wildlife on Public Lands and Other Lands" to Establish Rules Regulating the Use of Public Shooting Ranges.**

**BACKGROUND:**

An essential tool for the management of public shooting ranges is the establishment of rules regulating the use of public shooting ranges to provide for appropriate public use of the facilities and to ensure public safety. Draft rules are proposed as amendments to the Rules Regulating The Hunting of Wildlife on Public Lands and Other Lands, Chapter 13-121, Hawaii Administrative Rules. The draft rules authorize the establishment of agreements or concessions to operate public shooting ranges, establishing restrictions on firearms that can be used, and authorize the use of a broad range of hunting equipment for hunter education and public recreation. The proposed amendment is attached as Attachment C. 6. 1.

**n. RECOMMENDATION:**

1. Authorize the Division of Forestry and Wildlife to conduct public hearings to amend Hawaii Administrative Rules Chapter 13-121 to establish rules regulating the use of public shooting ranges, subject to review and approval by the Office of the Attorney General.
2. Authorize the Chairperson to set dates and times for public hearings, and appoint corresponding hearings officers.

**o. Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife for Na Ala Hele Trail and Off Highway Vehicle Park Purposes and Issuance of a Management Right-of-Entry, Wahikuli, Maui, Tax Map Key: (2) 4-5-21:4.**

**APPLICANT:** Department of Land and Natural Resources, Division of Forestry and Wildlife

**LEGAL REFERENCE:** Section 171-11 and 55, Hawai'i Revised Statutes (HRS), as amended.

**LOCATION:** Portion of Government lands of Wahikuli, Maui, identified by Tax Map Key: (2)4-5-21:4, as shown on the attached map labeled Attachment C. 7. 1.

AREA: 665.5 acres, more or less.

ZONING: State Land Use District: Agriculture; County of Maui CZO: None

**TRUST LAND STATUS:**

1. Section 5(b) lands of the Hawai'i Admission Act
2. DHHL 30% entitlement lands pursuant to the Hawai'i State Constitution:  
YES X NO

CURRENT USE STATUS: Vacant and unencumbered.

PURPOSE: Na Ala Hele Trail and Off-Highway Vehicle Park.

**CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:**

This action before the Board is merely a transfer of management jurisdiction and does not constitute a use of State lands or funds, and therefore, this action is exempt from the provisions of Chapter 343, HRS, relating to environmental impact statements. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

**APPLICANT REQUIREMENTS:** Applicant shall be required to provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

**REMARKS:**

Use of off-highway vehicles (OHVs) has increased dramatically in recent years, providing recreational opportunities for a broad spectrum of the community. In many areas, the rapid increase in use of OHVs has not been accompanied by development of appropriate venues for their use. Population growth, accompanied by urban sprawl and environmental concerns, has produced a shortage of appropriate and legal areas to ride and drive off-highway recreational vehicles. Trespass and use of OHVs in environmentally sensitive areas is taking a toll of native resources across the state and there is now a pressing need to develop proactive management solutions to the problem. OHV parks provide managed recreational and educational facilities that allow for a variety of riding experiences for off-highway motorcycles and all-terrain vehicles.

Unauthorized and uncontrolled OHV use of natural areas often occurs when no designated local OHV sites are approved. Properly designated and managed OHV recreation sites and programs can help protect natural and historic resources by directing OHV use to the most appropriate sites that have been developed with environmentally sensitive design. The goal of this project is to develop an OHV site that incorporates an interpretive program focusing on natural, historic and cultural values. The park will feature managed environmental

activities and volunteer programs that offer positive means to promote responsible land use that benefits the parks, local communities, and other outdoor recreation venues. Development of this project will protect open space, enhance local neighborhoods through partnerships with local schools, and provide opportunities for projects to make the park an integral part of the community.

The state Na Ala Hele Maui Advisory Council has been studying this issue since 2002 and much work has already gone into the search for a suitable location for an OHV park. In 2005, NAH brought the National Off-Highway Vehicle Conservation Council to Maui and facilitated the creation of the Maui Off-Highway Vehicle Association (MOHVA). Through a joint effort with MOHVA, the Division conducted a survey of approximately 400-500 OHV enthusiasts which demonstrated strong support to identify a site and develop an OHV park. In 2007, the Wahikuli parcel became available, and the Division has determined that this parcel provides a suitable location for the development of the park. Continuing discussions have included the State DLNR – Land Division, County of Maui – Planning Department, The Nature Conservancy, the Hawaii Housing Finance and Development Corporation (HHFDC), and several environmental organizations.

HHFDC is developing a residential subdivision nearby and has expressed several concerns about the OHV park as it relates to their proposed housing development. A small portion (the “toe”) of the parcel requested for set aside to DOFAW falls within the HHFDC’s master plan for the housing development, as do some wells that are needed for the housing development, as shown on the attached map labeled Attachment C. 7. 2. The Division has given careful consideration to the concerns expressed by HHFDC and is confident that mutually satisfactory arrangements can be made. Concerns expressed by HHFDC are that the OHV park be developed and operated on lands north of Hanakea Gulch, that HHFDC have access to the wells, and that approval for subdivision be obtained. The Division is receptive to these concerns and will continue to work with HHFDC to achieve a mutually acceptable arrangement.

**o. RECOMMENDATION:**

That the Board, subject to Applicant fulfilling the Applicant Requirements above in sub-item o:

1. Approve of and recommend to the Governor the issuance of an executive order setting aside the subject lands to Department of Land and Natural Resources, Division of Forestry and Wildlife under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
  - A. Reservation for future withdrawal of lands covering tmk: 4-5-21:portion 4 (toe), south of Hanakea Gulch along the boundary of the Land Use Commission Urban Classification boundary or other boundary acceptable to the Hawaii Housing Finance and Development Corporation (HHFDC) and DLNR for the Villages of Leiali’i project;

- B. Reservation for designation of easements for potable water wells 5 and 6 located on tmk: 4-5-21:4, transmission lines, facilities and improvements and access thereto for the Villages of Leiali'i project;
  - C. Access to the subject property, TMK 4-5-21: 4, over TMK 4-5-21: 3 and 22 shall be by temporary rights-of-entry and ultimately a permanent access easement in forms and content acceptable to HHFDC and the Department of Land and Natural Resources, respectively.
  - D. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
  - E. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
  - F. Review and approval by the Department of the Attorney General; and
  - G. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Authorize the issuance of a management right-of-entry to Housing Finance and Development Corporation for tmk: 4-5-21:22 and portion of 4 (toe), and Division of Forestry and Wildlife for tmk: 4-5-21:portion of 4, which are by this reference incorporated herein and further subject to the following:
- A. The standard terms and conditions of the most current right-of-entry document form, as may be amended from time to time; and
  - B. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.





Wahikuli OHV Park



Maui County GIS  
2115 N. Honoapiʻilani Avenue, Suite 104  
Honolulu, HI 96825





**Figure 3**  
**ORF-27E Western Blot**  
 Village of Leiria  
 February 2006

**MEMORANDUM OF AGREEMENT  
REGARDING DRAINAGE AND DISPOSAL  
OF TRANSFORMER FLUID AND CLEANING UP IMPACTED SOILS  
("Agreement")**

THIS AGREEMENT is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010, by and between STATE OF HAWAII, BOARD OF LAND AND NATURAL RESOURCES ("Owner"), THE HAWAII HOUSING FINANCE AND DEVELOPMENT CORPORATION ("HHFDC") and PIONEER MILL COMPANY, LLC ("PMCo"), collectively, the "Parties".

This agreement is designed to promote increased understanding, cooperation and interaction, and to provide basic principles and guidelines for the parties involved with the drainage and disposal of transformer fluid and possible clean up of impacted soils in or on the subject property.

**RECITAL**

A. On August 14, 2009, the Owner approved the Issuance of a Management Right-of-Entry to the HHFDC over the Villages of Leiali'i Mauka Lands, identified by Tax Map Key Nos. (2) 4-5-021:004 (portion of) and 022 (portion of). HHFDC executed a Management Right-of Entry over the Leiali'i Mauka Lands on September 3, 2009. As the developer of the Villages of Leiali'i Mauka Lands, they may have an interest in this Agreement, and are included as a party to this Agreement.

B. The Owner and HHFDC have requested that PMCo enter the subject property, identified as Tax Map Key Nos. (2) 4-5-21:22, situate at Wahikuli, Lahaina, Maui, Hawaii (the "Property"), for the purposes of draining and disposing of transformer fluid contained in one (1) pole-mounted transformer, three (3) substation transformers and two (2) substation capacitors that were reported to be in poor condition and may pose a material threat of a release or past release of a hazardous substance as described in the Phase I Environmental Site Assessment for Villages of Leiali'i Phases A and B (September 2008) (the "Transformers") located at two (2) sites located within the Property, being the "K-Pump Site" and a site above Crater Reservoir (the "Crater Site") as generally identified on Exhibit A attached hereto. The scope of work shall include the remediation, removal and disposal of any contamination that is determined to exist in the area that is or may be a result of any prior use of hazardous materials associated with the transformers.

C. PMCo has agreed to undertake such work as a volunteer without compensation, without in any manner admitting or accepting any liability for such transformers, their condition or their contents, by utilizing the services of PMCo's consultant, Kevin S. Kennedy Consulting, LLC (the "Consultant"), on the terms and conditions set forth in this Agreement. PMCo has agreed to undertake such work with the understanding that this Agreement is not intended as a release of any liability or obligation under the lease or Federal, State or County law, which liability or obligation PMCo expressly denies.

**AGREEMENT**

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, Owner, HHFDC and PMCo hereby agree as follows:

1. PMCo will engage Consultant, at PMCo's expense, to test the contents of each Transformer using the applicable Environmental Protection Agency's TSCA and the State Department of Health's Hazard Evaluation and Emergency Response Office's Environmental Action Levels (EAL) criteria, as applicable, and thereafter to drain such contents and dispose of same together with, if required under Section 2 below, the Transformer, to test the soil under and around each

**EXHIBIT "B"**

Transformer that is found to be releasing or where there is evidence of a past release of polychlorinated biphenyls ("PCBs"). If the Transformer is found to contain transformer fluid containing PCBs above applicable EAL criteria and/or there is evidence of soil or cement staining, to remove and dispose of soil contaminated with PCBs above applicable EALs by such Transformer, and to prepare a completion report documenting test results and cleanup activities performed hereunder, in accordance with applicable laws in accordance with Sections 2, 3 and 4 below (collectively, the "Work"). This Agreement does not require PMCo to undertake any other investigation or remediation activities other than the Work. In addition, such Work is being done as an accommodation to Owner by PMCo without any acknowledgement by PMCo that PMCo has any legal obligation or liability concerning the Transformers, their condition or their contents and PMCo specifically disclaims any such obligations and liability. In performing the Work, PMCo shall not be required to take any action inconsistent with the preceding sentence, including, but not limited to, identifying itself as the owner or responsible party with respect to the disposal of the Transformers, transformer fluid and soils. Owner agrees that it will execute such manifests and other disposal-related documents as may be reasonably required by law. Owner, by executing any documents pursuant to this Agreement, is signing only in its capacity as the titleholder of the property, and such signature shall not imply, be construed to mean, or constitute an admission that it is the owner of any hazardous waste or materials that may be discovered at or removed from the subject property, nor that is a hazardous waste generator or transporter, hazardous waste treatment, storage and disposal facility, or used oil marketer or burner, for such hazardous waste or material. PMCo or Consultant shall review the manifests and disposal-related documents to confirm that the materials intended for disposal have reached their intended destination in the proper quantities described in such manifests and disposal-related documents, and shall provide the Owner with copies of such manifests and disposal-related documents that Owner receives.

2. Owner and HHFDC shall provide PMCo and Consultant with reasonable access to the Property to perform the Work. PMCo shall remove the pole-mounted transformer at the Crater Site and place same on the ground next to such pole in order to facilitate the testing and disposal activities of the Consultant with respect thereto. Such transformer shall be left in such location and not remounted, and the Work shall not include the disposal of any transformer carcass or any other equipment, unless the contents of a Transformer are found to contain PCBs in amounts above applicable EALs, in which case PMCo shall be responsible for disposal of such transformer.
3. If any Transformer is found to contain PCBs in an amount above applicable EALs, Consultant shall determine by testing the soil immediately adjacent to the concrete pad on which such Transformer is located (or under the pole-mounted Transformer, as applicable) to determine whether such soil contains PCB's in amounts above applicable EALs, and if such soil contains PCBs above such applicable EALs, PMCo or Consultant shall determine the extent of the contamination and dispose of soil containing PCBs above such applicable EALs in accordance with applicable laws, subject to Owner's responsibilities under Section 1 above.
4. Upon completion of the investigation, cleanup and disposal work described herein, PMCo or Consultant shall provide a report to the Owner and HHFDC documenting the work covered by this Agreement.

5. PMCo shall carry and maintain, at PMCo's own expense, or shall cause Consultant to maintain or be covered by:

- a. To the extent required by law, workers' compensation insurance affording statutory limits, and employers' liability coverage with limits of not less than \$500,000 covering all persons admitted to the Property under the terms of this Agreement;
- b. Comprehensive general liability insurance, including contingent liability, contractual liability and products and completed operations liability, covering all activities conducted on the Property. The limits of liability shall be not less than:

Bodily Injury and Property Damage Liability  
\$1,000,000 each occurrence/\$2,000,000 aggregate; and

Personal Injury Liability  
\$1,000,000 each occurrence/\$2,000,000 aggregate.

- c. Comprehensive automobile liability insurance covering all owned, hired or non-owned vehicles, including the loading or unloading thereof on the Property:

Bodily Injury and Property Damage Liability  
\$1,000,000 each accident

All policies shall be written by companies acceptable to Owner and authorized to do business in the State of Hawaii.

Owner and HHFDC shall be included as additional insureds on all of the policies for the foregoing coverages (except for the workers' compensation policy). All policies shall provide for prior notice of material change in coverage, cancellation or nonrenewal and coverages shall be primary and not excess or contributory to any similar coverage carried by Owner or any other additional insured.

- 6. PMCo acknowledges that Owner and HHFDC have not made any representations or warranties whatsoever concerning the condition of the Property or its suitability for the Work.
- 7.. It is expressly understood and agreed that the failure of either party to insist in any one or more instances upon strict performance of any of the terms and conditions of this Agreement, or to exercise any rights herein conferred, shall not be deemed a waiver or relinquishment of any of the other party's right to assert or rely upon such terms, conditions, or rights in any other instance.
- 8. This Agreement shall be binding upon the heirs, personal representatives, successors and assigns of the parties hereto.
- 9. This Agreement shall at all times be construed under the laws of the State of Hawaii.
- 10. If any term or provision of this Agreement or the application thereof to any persons or circumstances shall to any extent or for any reason be invalid or unenforceable, the remainder of

this Agreement and the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11. This Agreement, including the exhibits attached hereto, represents the entire and integrated agreement between Owner, HHFDC and PMCo.

IN WITNESS WHEREOF, the parties have executed the Agreement as of the date first above written.

Approved by the Board of Land and Natural Resources  
at its meeting held on: \_\_\_\_\_

Approved as to Form:

OWNER:

STATE OF HAWAII, BOARD OF LAND AND  
NATURAL RESOURCES

By: \_\_\_\_\_  
Deputy Attorney General

By: \_\_\_\_\_  
Name: Laura H. Thielen  
Title: Chairperson

Date: \_\_\_\_\_

PMCo

PIONEER MILL COMPANY, LLC

By: \_\_\_\_\_  
Name:  
Title:

Approved as to Form:

HHFDC

HAWAII HOUSING FINANCE AND  
DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Deputy Attorney General

By: \_\_\_\_\_  
Name: Karen Seddon  
Title: Executive Director

Date: \_\_\_\_\_



**Exhibit A - Location of Transformers**

